

**Instructions for Form CT-46****CT-46-I****Claim for Investment Tax Credit**

Tax Law — Section 210.12 and 210.12-D

Investment Tax Credit

General business corporations may claim an investment tax credit under section 210.12 against the tax imposed by Article 9-A, for the tax year during which qualified property is placed in service. The investment tax credit is computed on the investment credit base. The investment credit base is the cost or other basis when placed in service in New York State for federal income tax purposes of qualified tangible property, including buildings and structural components of buildings, less the amount of nonqualified nonrecourse financing with respect to such property. Do not include in the investment credit base any amount that was expensed under section 179(a) of the Internal Revenue Code (IRC).

The percentage to be used to compute the investment tax credit will depend upon the period during which the property was acquired, constructed, reconstructed or erected. Periods and the applicable rates are listed in *Rate Schedule 1* on page 4 of Form CT-46.

If an acquisition, construction, reconstruction or erection began in one tax period and was completed in another period, the applicable rate must be applied to the investment credit base attributable to each period. The method that must be used to compute the investment tax credit in this situation may be found in Article 9-A, Franchise Tax Regulations, section 5-2.5.

Section 210.12-D allows an employment incentive tax credit for property where the acquisition, construction, reconstruction or erection began on or after January 1, 1987. For details, see instructions for completing Schedule C of Form CT-46, on page 4 of these instructions.

These credits may not reduce the tax liability to less than the greater of the tax on minimum taxable income or the fixed dollar minimum tax.

Any portion of these credits that cannot be used to reduce current year tax liability may be carried over to following years. An investment tax credit or additional investment tax credit allowed for tax years beginning before January 1, 1987, may be carried forward to any tax year beginning before January 1, 2002. An investment tax credit or employment incentive credit allowed for tax years beginning on or after January 1, 1987, may be carried forward for up to fifteen tax years (in the case of a New York S corporation, ten years).

Qualified property for the investment tax credit is tangible property, including buildings and structural components of buildings, that:

- (a) was acquired, constructed, reconstructed or erected by the taxpayer after December 31, 1968;
- (b) is depreciable pursuant to section 167 or 168 of the IRC;
- (c) has a useful life of 4 years or more;
- (d) was acquired by the taxpayer by purchase pursuant to section 179(d) of the IRC;
- (e) has a situs in New York State; and

- (1) is principally used by the taxpayer in producing goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing; or
- (2) is an industrial waste treatment facility or air pollution control facility, used in the taxpayer's trade or business; or
- (3) is research and development property.

If qualified property is acquired to replace other insured property that was stolen or was destroyed by fire, storm, shipwreck or other casualty, the basis of the replacement property is its cost reduced by any amount of gain not recognized for federal income tax purposes because the insurance proceeds were invested in the replacement.

Recapture of investment tax credit previously allowed must be computed if the property was stolen, destroyed or disposed of prior to the end of its useful life, if there is an increase in nonqualified nonrecourse financing, or if the taxpayer was the target in a merger, consolidation or acquisition.

Types of property that do not qualify for the investment tax credit include:

- (a) property leased to others (except qualified property in a safe harbor lease or production property which is beneficially owned by the lessee);
- (b) retail equipment, office furniture and office equipment;
- (c) excavating and road building equipment;
- (d) public warehouses used to store the taxpayer's goods;
- (e) electricity generating equipment.

Types of property that qualify for the investment tax credit in lieu of other credits include eligible business facilities for which a credit is allowable under section 210.11.

Definitions

Nonqualified nonrecourse financing: Nonrecourse financing is any amount for which the taxpayer is protected against loss and, generally, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or someone related to a person (other than the taxpayer) who has an interest in the activity. Nonrecourse financing is nonqualified where it is not qualified commercial financing, as defined in section 46(c)(8) of the IRC. The reduction in computing the investment credit base, in the amount of nonqualified nonrecourse financing, is required only to the extent that such an exclusion would be warranted under section 46(c)(8) of the IRC. Thus, the subtraction is required in the case of a corporation meeting the personal holding company stock ownership criteria contained in section 542(a)(2) of the IRC, with respect to property used in connection with an activity with respect to which any loss is subject to limitation under section 465 of the IRC.

Manufacturing is the process of working raw materials into wares suitable for use or giving new shapes, new qualities or new combinations to matter that already has gone through

some artificial process by the use of machinery, tools, appliances and other similar equipment.

Property used in the production of goods includes machinery, equipment or other tangible property principally used in the repair and service of other machinery, equipment or other tangible property used principally in the production of goods.

Life or Useful Life (of property) means the depreciable life provided by section 167 or 168 of the IRC.

Industrial waste treatment facilities means property constituting facilities for the treatment, neutralization or stabilization of industrial waste and other wastes (as the terms *industrial waste* and *other wastes* are defined in section 17-0105 of the Environmental Conservation Law) from a point immediately preceding such treatment, neutralization or stabilization to the point of disposal. Such property includes the necessary pumping and transmitting facilities, but excludes facilities installed for the primary purpose of salvaging materials that are usable in the manufacturing process or are otherwise marketable. When claiming the credit for this property, attach the certificate of compliance concerning industrial waste treatment facilities and industrial waste treatment controlled process facilities as explained in section 17-0707 of the Environmental Conservation Law.

Air pollution control facilities means property constituting facilities that remove, reduce, or render less noxious air contaminants emitted from an air contamination source (as the terms *air contaminant* and *air contamination source* are defined in section 19-0107 of the Environmental Conservation Law) from a point immediately preceding such removal, reduction or rendering to the point of discharge of air meeting emission standards as established by the Department of Environmental Conservation. The term also includes flue gas desulfurization equipment and attendant sludge disposal facilities, fluidized bed boilers, precombustion coal cleaning facilities or other facilities. It does not include facilities installed primarily to salvage materials that are usable in the manufacturing process or are marketable or that rely for their efficacy on dilution, dispersion or assimilation of air contaminants in the ambient air after emission. If claiming the credit for this property, attach the certificate of compliance concerning air pollution control facilities and air pollution controlled process facilities as explained in section 19-0309 of the Environmental Conservation Law.

Research and development property is property used for research and development in the experimental or laboratory sense, but not for the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical or similar projects.

Credit for Rehabilitation Expenditures of a Retail Enterprise

Section 210.12(k) allows a credit for qualified rehabilitation expenditures, as defined in section 47(c)(2) of the IRC. In addition to qualifying for such federal credit, the taxpayer must constitute a retail enterprise. A *retail enterprise* is a taxpayer registered as a vendor under Article 28 of the New York State Tax Law and is *primarily* (at least 50%) engaged in retail sales as defined by section 1101(b)(4)(i). The rehabilitated property must be located in New York State and the credit is limited to the portion of the expenditures attributable to the property employed in retail sales.

Provisions for recapture applicable to investment tax credit property (section 210.12(g)) also apply to the credit allowed under section 210.12(k). Refer to instructions for computing recapture in Schedule E on pages 5 and 6.

Credit for Rehabilitation of an Historic Barn

Section 210.12(l) allows a credit for qualified rehabilitation expenditures, as defined in section 47(c)(2) of the IRC, paid or incurred for any barn located in New York State that is a qualified rehabilitated building, as defined in section 47(c)(1) of the IRC. A barn must be a building originally designed and used for storing farm equipment or agricultural products, or for housing livestock. No rehabilitation credit is allowed for a barn converted to a residence or a barn on which the historic appearance has been altered. A barn must either have been placed in service prior to 1936 or, if placed in service after such time, a barn must be a certified historic structure located in a registered historic district. Expenditures for the enlargement of a barn do not qualify for the credit. However, a barn will not be disqualified from the credit because an enlargement is made to a barn. In such cases, the total expenditures paid or incurred for rehabilitation must be apportioned to exclude those expenditures attributable to the enlargement. For detailed information concerning qualified rehabilitated expenditures, qualified rehabilitated buildings, alteration of historic appearance of a barn, certified historic structures, registered historic districts and enlargement of a barn, refer to TSB-M-97(5)(C).

Mergers and Acquisitions

Section 210.12(e) provides that when an acquisition occurs, any carryover of investment tax credit will not be allowed to the acquired corporation (*target corporation*) in the tax year in which it was a target corporation, or to any subsequent tax year if the credit was allowed for a tax year prior to the acquisition year. When a merger or consolidation occurs, any carryover of investment tax credit will not be allowed to the corporation remaining after the merger (*surviving corporation*) or consolidation (*consolidated corporation*) in the tax year the corporate merger or corporate consolidation occurred, or any subsequent tax year if the credit was allowed for a tax year prior to the merger or consolidation year and the credit is attributable to a corporation that is merged or consolidated into the surviving corporation or consolidated corporation. However, the investment tax credit may be carried over if the surviving corporation or consolidated corporation can demonstrate that the acquiring corporation originally claimed and was allowed the investment tax credit.

Computation of Tax Credit(s)

Reporting Period

If you are a calendar year filer, check the box in the upper right corner on the front of the form.

If you are a fiscal year filer, complete the beginning and ending tax period boxes in the upper right corner on the front of the form.

Complete Schedules A through E, as appropriate, before completing this section.

Line 8 — Enter from Schedule E, line 32, recaptured investment tax credit, additional investment tax credit (section 210.12-A), employment incentive tax credit (section 210.12-D) and additional recapture.

Line 9 — This is the net investment tax credit available for use this period. If the net investment tax credit reduces the franchise tax below the higher of the tax on minimum taxable income or the fixed dollar minimum tax, complete lines 10

through 17. If it does not, enter the amount shown on the appropriate line on Form CT-3 or CT-3-A. If the amount on line 8 is greater than line 7, you have a net recaptured tax credit. The recaptured tax credit must be added back to the tax on Form CT-3, line 78 or Form CT-3-A, line 77.

Computation of Unused Investment Tax Credit Available for Carryover to Future Periods

Line 11 — Enter tax credits claimed on Form CT-45, *Claim for Eligible Business Facility Tax Credit*, Form DTF-601, *Claim for EDZ Wage Tax Credit* and Form DTF-601.1, *Claim for ZEA Wage Tax Credit*.

Line 13 — Enter the higher of the tax on minimum taxable income or the fixed dollar minimum tax.

Line 14 — This is the amount of investment tax credit to be used this period. If line 13 is more than line 12, no credit is allowed.

Line 15 — This is the investment tax credit available before deduction of refund.

Line 16 — Enter amount of refund of investment tax credit claimed on line 43. See *Special Instructions - Refund Combining an Overpayment and Unused Investment Tax Credit* on page 6.

Line 17 — If you do not claim a refund of investment tax credit on line 16, enter the amount from line 15 on this line. If you claim a refund of investment tax credit on line 16, reduce line 15 by the amounts on lines 16 and 13, and enter the result on this line. Do not enter a negative figure.

Schedule A — Property Located in New York State Eligible for Investment Tax Credit

Columns A and B — Describe qualified property placed in service during this taxable period. Individual items of machinery and equipment must be listed separately and may not be shown as one general category such as *machinery*. The description should be made in terms that a layman will understand. Attach additional pages if necessary.

Column D — Enter the useful life of each item claimed; the *useful life* is the number of years an item is expected to be of service to the taxpayer. **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 total investment credit base.

Column F — Enter the amount of investment tax credit on property (except research and development property claimed at the optional 9% rate and computed in column (G) listed in this schedule). New York C corporations use appropriate rate from Schedule 1 on page 4. Electing New York S corporations must use a 4% rate.

Column G — Enter the amount of investment tax credit claimed on research and development property listed in this schedule and claimed at the optional 9% rate. Electing New York S corporations must substitute 7% for 9%.

Schedule B-1 — Rehabilitation Expenditures for a Retail Enterprise in New York State

Provide the information required in columns A and B. Attach a separate page if you need more space. Follow instructions for

column D as required for Schedule A. Enter in column E the portion of the qualified rehabilitation expenditures paid or incurred with respect to that part of the building employed in retail sales activity.

Schedule B-2 — Rehabilitation Expenditures in New York State for a Historic Barn

Provide the information required in columns A and B. Attach a separate page if you need more space.

If the expenditures include an enlargement of a barn and can be separately accounted for, exclude the expenditures attributable to the enlargement from this schedule. Otherwise, on a separate page, show the total expenditures (including the enlargement) and the apportionment method to exclude the expenditures for the enlargement (as prescribed in TSB-M-97(5)(C)) to arrive at the amount of rehabilitation expenditures to be entered in column A. Enter the useful life of each item claimed in column C (follow the instructions for column D in Schedule A). Enter in column D of this schedule the amount of qualified rehabilitated expenditures paid or incurred with respect to a qualified rehabilitated barn.

If a barn is listed in the National Register or a barn is located in a registered historic district and is of historic significance to the district, the barn is a certified historic structure. A certified historic structure must have a rehabilitation certified by the federal Secretary of Interior or NYS Office of Parks, Recreation and Historic Preservation. If the barn for which a credit is claimed is a certified historic structure, attach the appropriate certification. For additional information in this area, see TSB-M-97(5)(C).

To qualify for the credit, a barn must have been substantially rehabilitated. To determine whether a barn has been substantially rehabilitated, the expenditures incurred to rehabilitate the barn during a measurement period selected by the taxpayer must exceed the greater of the adjusted basis of the barn or \$5,000. The measurement period is a 24-month period selected by the taxpayer and ending with or within the taxable year. If the rehabilitation could reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, the measurement period may be 60 months long. You may be required to submit documentation of the architectural plans and specifications at a later date. The adjusted basis is generally determined as of the beginning of the first day of the measurement period.

Attach to the claim for this credit documentation that the historic appearance of the barn has not been materially altered and, where appropriate, documentation that the barn is of no historic significance to a registered historic district. One form of documentation that the historic appearance of the barn has not been materially altered is a letter from the NYS Office of Parks, Recreation and Historic Preservation. Documentation that a federal rehabilitation credit of 10% or 20% has been allowed for a barn is acceptable documentation for the allowance of this credit as an alternative to the documentation previously mentioned in this section.

Schedule C — Employment Incentive Credit - Section 210.12-D

When a taxpayer is allowed an investment tax credit under section 210.12, other than at the optional rate applicable to research and development property, the taxpayer may be eligible for an employment incentive credit under

section 210.12-D of the Tax Law. You must complete Schedule D to see if you qualify for the employment incentive credit under section 210.12-D.

General

The amount of employment incentive credit will be a percentage of the original investment credit base on which the investment tax credit was allowed for each of the two years immediately following the year the investment tax credit under section 210.12 was allowed. The percentage used to compute the employment incentive credit will vary depending on the year the investment tax credit (section 210.12) was claimed and on the level of employment (see *Rate Schedule 2* on page 4 of Form CT-46). However, the employment incentive credit will not be allowed for those years if the taxpayer's average number of employees in New York State, excluding general executive officers, is not at least 101% of the average number of employees in New York State, excluding general executive officers, during the tax year immediately preceding the tax year for which the investment tax credit was allowed. If the taxpayer was not subject to tax and did not have a tax year immediately preceding the tax year for which the investment tax credit was allowed, the employment incentive credit will be allowed if the average number of employees in New York State, excluding general executive officers, is at least 101% of the average number of employees in New York State, excluding general executive officers, during the tax year in which the investment tax credit (section 210.12) was originally claimed.

New York C Corporations — The employment incentive credit may not reduce the tax liability to an amount less than the higher of the tax on minimum taxable income or the fixed dollar minimum tax.

Employment incentive credit that cannot be used to reduce the current year's tax liability may be carried forward for up to fifteen tax years or until completely used. A New York C corporation may not claim a refund of the employment incentive credit.

New York S Corporation — The Tax Law has been amended to allow the shareholders of a New York S corporation to claim an employment incentive credit. The employment incentive credit will apply to any investment tax credit computed on property placed in service on or after January 1, 1997, whether or not deductible in such taxable year.

Example

A New York S corporation files its franchise tax return using a fiscal year of February 1, 1996 - January 31, 1997, and reports a regular investment tax credit (section 210.12) for property placed in service after January 1, 1997. The S corporation should complete Schedule D for taxable years February 1, 1997 - January 31, 1998 and February 1, 1998 - January 31, 1999, to determine if it is eligible for the employment incentive credit.

Any excess employment incentive credit that cannot be used to reduce a shareholder's current year's tax liability may be carried forward for up to **ten** tax years.

In lieu of carrying over any such excess, a shareholder that qualifies as an owner of a new business may elect to have the excess employment incentive credit refunded. A shareholder of an S corporation will be considered the owner of a new business if the S corporation, itself, qualifies as a new business under section 210.12(j) of the Tax Law. See definition in the instructions for Schedule F.

Column A — Enter the date and tax year in which the acquisition, construction, reconstruction or erection of property commenced.

Column B — Enter the tax period for which the original investment tax credit was allowed.

Column C — Enter the amount of the investment credit base upon which the original investment tax credit was allowed. Do not include research and development property if the investment tax credit was computed at the optional rate. See Rate Schedule 1 on page 4 of Form CT-46.

Column D — To determine the credit allowed under section 210.12-D, multiply the investment credit base by the appropriate percentage in *Rate Schedule 2* on page 4 of the form. Attach a separate sheet if necessary.

Example 1

A calendar year corporation acquired qualified property in 1995, at a cost of \$500,000. The investment tax credit and employment incentive credit allowed under section 210.12-D will be computed as follows:

Year	Average No. of N.Y. Employees	Computation of Credit
1994	200	Employment Base Year
1995	not required	\$25,000 (\$500,000 x 5% ITC rate)
1996	204	\$10,000 (\$500,000 x 2% employment incentive rate)
1997	199	0

In 1996, if the average number of employees had been 206 instead of 204, the percentage of employees in the current year as compared to the base year would have been 103% instead of 102%, and the corporation would have been entitled to compute its employment incentive tax credit at the rate of 2.5% (see *Rate Schedule 2* on page 4 of the form). In 1997, the corporation did not qualify for the employment incentive credit since the average number of employees was less than 101% of the number employed in 1994.

Example 2

A calendar year corporation acquired qualified property in 1995 at a cost of \$450,000,000 and an additional \$300,000 of research and development property upon which the corporation elected to compute the investment tax credit at the optional rate of 9%. The investment tax credit and employment incentive credit under section 210.12-D will be computed as follows:

Year	Average No. of N.Y. Employees	Computation of Credit
1994	200	Employment Base Year
1995	not required	\$21,527,000 (\$350,000,000 x 5% ITC rate plus \$100,000,000 x 4% ITC rate plus \$300,000 x optional 9% rate)
1996	204	\$9,000,000 (\$450,000,000 x 2% EIC rate)
1997	201	0

In 1996, if the average number of employees had been 206 instead of 204, the percentage of employees in the current year as compared to the base year would have been 103% instead of 102%, and the corporation would have been entitled to compute its employment incentive tax credit at the rate of 2.5% (see *Rate Schedule 2* on page 4 of the form). In 1997, the corporation did not qualify for the employment incentive credit since the average number of employees was less than 101% of the number employed in 1994.

Schedule D — Employment Information Required to Determine Eligibility for Employment Incentive Credit Under Section 210.12-D

Section 210.12-D(b) defines the average number of employees as the total number of employees that are employed within New York State on March 31, June 30, September 30, and December 31 divided by the number of these dates occurring during the tax period. Employees must be located in New York State. Do not include general executive officers.

Example

A taxpayer filing a report for a fiscal period beginning September 1, 1996, and ending August 31, 1997, would use the following dates to compute the average number of New York employees for that fiscal year: September 30, 1996, December 31, 1996, March 31, 1997, and June 30, 1997.

You must complete Schedule D for each period listed in Schedule C for which an employment incentive credit is claimed. When computing the average number of employees on lines 26 and 28, you **must exclude** any employee for whom an EDZ wage tax credit (section 210.19) was claimed based on employment within a zone equivalent area. Such employees **are included** for the employment base year on lines 25 and 27. Using the same figures as in *Example 1* above, assume that the corporation received the EDZ wage tax credit for fifteen of its employees in 1996 for 1996. The average number of employees would be 189 and the corporation would not be eligible for the employment incentive credit. This employee rule does not apply to the employment base year.

The term *employment base year* means the calendar year or fiscal year immediately preceding the investment tax credit year or, if the taxpayer was not taxable in New York State in such preceding year, the year in which the investment tax credit was allowed.

Schedule E — Computation of Recapture of Investment Tax Credit (section 210.12), Additional Investment Tax Credit (section 210.12-A) and Employment Incentive Credit (section 210.12-D)

If property on which an investment tax credit has been allowed is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the original credit allowed and the credit allowed for actual use must be added back to the tax otherwise due in the year of disposition or disqualification. Section 210.12(g) provides different formulas for computing the amount of recaptured investment tax credit for property depreciated under IRC sections 167 and 168.

- (1) For property depreciated solely under IRC section 167, the formula for recapture of investment tax credit is:

$$\frac{\text{months of unused life}}{\text{months of useful life}} \times \text{investment tax credit allowed}$$
- (2) For three-year property depreciated under IRC section 168, the formula for recapture of investment tax credit is:

$$\frac{\text{months of unused life}}{36 \text{ months}} \times \text{investment tax credit allowed}$$
- (3) For property depreciated under IRC section 168, other than three-year property or buildings or structural components of buildings, the formula for recapture of investment tax credit is:

$$\frac{\text{months of unused life}}{60 \text{ months}} \times \text{investment tax credit allowed}$$
- (4) For a building or structural component of a building placed in service after December 31, 1980, and depreciated under IRC section 168, the formula for recapture of investment tax credit is:

$$\frac{\text{months of unused life}}{\text{number of months allowed by IRC and used by taxpayer}} \times \text{investment tax credit allowed}$$

For tax years beginning on or after January 1, 1987, property that is depreciated under IRC section 168 for federal tax, but that is required to be depreciated pursuant to IRC section 167 alone for New York tax (*decoupled property*), is subject to the first recapture formula set out above.

For tax years beginning in 1987, property that is disposed of or ceases to be in qualified use will be recaptured as follows:

- (i) If the property was depreciated for New York State franchise tax under IRC section 167, use the life of the property as depreciated under IRC section 167
or
- (ii) If the property was depreciated for New York State franchise tax under IRC section 168, use the life of the property as depreciated under IRC section 168.

If qualified property has a useful life of more than 12 years, no credit need be added back if it has been in use for more than 12 consecutive years.

If an investment tax credit is allowed for an air pollution control facility on the basis of a certificate of compliance, issued pursuant to the Environmental Conservation Law, and the certificate is revoked pursuant to subdivision 3 of section 19-0309 of the Environmental Conservation Law, the revocation will constitute a disposal or cessation of qualified use and a recapture of investment tax credit is required (unless the property otherwise qualifies).

If the taxpayer is a target corporation in a subdivision seventeen corporate acquisition, property which was the basis for the investment tax credit shall be deemed disposed of and the investment tax credit must be recaptured in the tax year in which the acquisition occurred. If a taxpayer is a consolidated corporation in a subdivision eighteen corporate merger, property of a target corporation which was the basis for the allowance of the investment tax credit shall be deemed disposed of on the day immediately preceding the corporate consolidation or corporate merger.

Recapture of investment tax credit (but not additional investment tax credit or employment incentive credit) will be augmented by an additional recapture amount equal to the original recapture amount multiplied by the interest rate in effect (without compounding) on the last day of the tax year. For applicable rates see Regulations, Part 603, or call the Business Tax Information Center at 1 800 972-1233. For information, you can also call toll free 1 800 225-5829. From areas outside the U.S. and Canada, call (518) 485-6800.

If at the end of any tax year, there is a net increase in nonqualified nonrecourse financing, an amount equal to the decrease in the investment tax credit that would have resulted from the net increase in nonqualified nonrecourse financing must be recaptured.

If the property qualified for the additional investment tax credit, 50% of the amount of recaptured investment tax credit must be added back for each year the additional investment tax credit was allowed.

If the property qualified for the employment incentive credit, an appropriate amount of employment incentive credit must be added back. This amount may be computed by multiplying the recaptured investment tax credit by a recapture percentage for each year the employment incentive credit was allowed. The recapture percentage will be computed by dividing the employment incentive credit rate used by the investment tax credit rate used.

Example: Taxpayer A computed an investment tax credit using a 5% rate. The corporation qualifies for and computed an employment incentive tax credit using a 2% rate. The recapture percentage is 40% as follows:

$$\frac{2\% \text{ EIC rate}}{5\% \text{ ITC rate}} = 40\% \text{ Recapture Percentage}$$

If the recapture amount exceeds the total of the investment tax credit, additional investment tax credit, or employment incentive credit claimed, the excess must be added back to the tax on Form CT-3, line 78, or Form CT-3-A, line 77. Investment tax credit recapture may not reduce any other tax credits other than those shown on page 1 of Form CT-46.

Column I — Multiply 50% of the amount in column H by the number of years the additional investment tax credit was allowed. Multiply the recapture percentage by the amount in column H for each year the employment incentive credit was allowed.

Line 31 — The additional recapture required to be added back is an amount equal to the recaptured investment tax credit (but not additional investment tax credit) multiplied by the interest rate in effect on the last day of the tax year.

Example: \$1000 recaptured investment tax credit x 9% interest rate for 1995 = \$90 additional recapture.

Schedule F - Computation of Refund

A corporation that is eligible to claim an investment tax credit and is also a new business as defined in Article 9-A, section 210.12(j), may elect to receive a refund of its unused investment tax credit instead of carrying the credit forward. Interest will not be paid on refund of investment tax credit. Section 210.12(j) defines a new business as any corporation except:

- a corporation in which over 50% of the number of shares of stock entitling their holders to vote for the election of directors or trustees is owned by a taxpayer subject to the tax under Article 9-A; sections 183, 184, 185 or 186 of Article 9; or Article 32; or Article 33 of the Tax Law;
- a corporation that is substantially similar in operation and in ownership to a business entity or entities taxable or previously taxable under Article 9-A; section 183, 184, 185 or 186 of Article 9; or Article 32; or Article 33; or that would have been subject to the tax under Article 23, as it was in effect on January 1, 1980; or the income (or losses) of which is (or was) includable under Article 22 of the Tax Law;
- a corporation that has been subject to tax under Article 9-A for more than four tax years (excluding short periods) prior to the tax year during which the taxpayer first becomes eligible for the investment tax credit.

Line 33 — Enter total franchise tax (before any deductions of tax credits or prepayments) from Form CT-3 or Form CT-3-A.

Lines 34 - 37 — Certain tax credits earned by the corporation must be applied against the tax before determining the amount of the refundable investment tax credit. If more than one credit is available to a corporation, the tax credits must be applied against the tax in the order provided by section 210 of the Tax Law.

Line 40 — These credits cannot reduce tax to an amount less than the higher of the tax on minimum taxable income or the fixed dollar minimum. Therefore, do not enter on this line an amount greater than that required to reduce the tax to the minimum tax due.

If no tax credits are available, enter "0."

Available nonrefundable investment tax credit not applied against the current year franchise tax will be carried forward to future periods. Available refundable investment tax credits must be refunded or carried forward. You cannot divide this amount.

Line 41 — The amount on this line cannot be less than the higher of the tax on minimum taxable income or the fixed dollar minimum.

Line 43 — This is the refundable unused investment tax credit. For more information regarding this computation, see *Special Instructions* below.

A tax credit cannot reduce the franchise tax below the higher of the tax on minimum taxable income or the fixed dollar minimum. However, to avoid the unnecessary exchange of funds, this refund will be applied against the minimum tax due and the balance, if any, refunded.

Special Instructions - Refund Combining an Overpayment and Unused Investment Tax Credit

CT-3 or CT-3-A Complete Form CT-3, lines 1 through 98, or CT-3-A, lines 1 - 99.

Enter the amount of the overpayment to be refunded on CT-3, line 98, or CT-3-A, line 99. Enter the investment tax credit refund on CT-3, line 99, or CT-3-A, line 100.

CT-46 Enter "0" on line 41. On line 42, enter the amount included on line 15 which was computed on lines 1, 2, 3 and 4. Complete line 43.

Special Instructions - Application of Unused Investment Tax Credit against Minimum Tax Due When the Tax Credit Is Less Than the Minimum Due

CT-46 Complete lines 33 through 42.

Line 43 - Subtract line 42 from line 41 to determine the balance of the minimum tax due. Use parentheses () to indicate that the amount is not to be refunded. Enter the same amount without parentheses on Form CT-3, line 86, or CT-3-A, line 88.

CT-3 or Complete the appropriate form.

CT-3-A Enter the balance of minimum tax due on CT-3, line 86 or CT-3-A, line 88 and pay this amount. The minimum tax due is the higher of the tax on minimum taxable income or the fixed dollar minimum.