



Instructions for Form CT-44

Claim for Investment Tax Credit for the Financial Services Industry

Tax Law — Sections 210.12, 210.12-D, 1456(i)

CT-44-I

Instructions are included for the following schedules:

Schedule A - Investment Tax Credit

Schedule B - Employment Incentive Credit

Schedule C - Recapture of Investment Tax Credit

General business corporations and banking corporations may claim an investment tax credit under section 210.12 or section 1456(i), respectively, against the tax imposed by Article 9-A or Article 32, for the tax year during which qualified property is placed in service. The property must be placed in service on or after October 1, 1998, and before October 1, 2003.

In order to claim the credit, all or a substantial portion of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such property must be located in New York State.

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).

Employment Incentive Credit (Article 9-A filers only)

Section 210.12-D allows an **employment incentive credit** for two years immediately succeeding the tax year in which an investment tax credit is allowed. This credit is available to Article 9-A filers only. For details, see instructions for completing Schedule C.

The investment tax credit and the employment incentive credit may not reduce the tax liability to less than the greater of the tax on minimum taxable income or the fixed dollar minimum tax for Article 9-A filers, or to the fixed dollar minimum for Article 32 filers.

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 employment incentive credit may be carried forward for up to 15 tax years (10 tax years for a New York S corporation).

A corporation which qualifies as a new business may elect to receive a refund instead of carrying forward the unused portion. No interest is paid on the refund. For definition of a new business, see the instructions for line 32 on page 4.

Qualified Property

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 on or after October 1, 1998, and before October 1, 2003;
- (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 according to section 179(d) of the IRC;
- (e) is located in New York State; and
- (f) is principally used in the ordinary course of the taxpayer's business in one of the following capacities:
 - as a broker or dealer in connection with the purchase or sale of stocks, bonds, other securities (IRC section 475(c)(2)), or of commodities (IRC section 475(e)), or in providing lending, loan arrangement, or loan origination services to customers in connection with the purchase or sale of securities (IRC section 475(c)(2));

- of providing investment advisory services for a regulated investment company (IRC section 851);
- as an exchange registered as a national securities exchange (sections 3(A)(1) and 6(A) of the Securities Exchange Act of 1934);
- as a board of trade (section 1410(a) of the Not-for-Profit Corporation Law); or
- as an entity that is wholly owned by one or more such national securities exchanges or boards of trade and that provides them with automation or technical services (available to Article 9-A taxpayers only).

Though the property must be located in New York State, it is not necessary for the users of the property to be located in New York State. For example, a computer system that is placed in service in New York State would qualify for the credit, even if the brokers accessing the system are located outside New York State.

Property leased to a broker, dealer, national securities exchange, board of trade, or an entity wholly-owned by a national securities exchange or board of trade, as described above, that is an affiliate of the taxpayer, and which principally uses the property in the qualifying activities listed above qualifies for the credit, provided it otherwise meets the criteria for qualified property. Any contract or agreement to lease or rent, or for a license to use the property, is considered a lease. In addition, property qualifies if it meets the criteria and is purchased by the taxpayer, but is principally used by a broker, dealer, national securities exchange, or board of trade, which is an affiliate of the taxpayer in the qualifying activities listed above.

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 credit – Recapture of investment tax credit previously allowed must be computed if the property was stolen, destroyed, disposed of, or ceases to be in qualified use prior to the end of its useful life, if there is an increase in nonqualified nonrecourse financing, or if the Article 9-A taxpayer was the target in a merger, consolidation, or acquisition.

Types of property that qualify for the investment tax credit instead of other credits include eligible business facilities for which a credit is allowable under section 210.11 or section 1453(b).

Definitions

Affiliate means:

- 1) a partnership 80% or more of whose interest in the partnership's capital or profits is owned or controlled, directly or indirectly, by the taxpayer;
- 2) a corporation 80% or more of whose voting stock is owned or controlled, directly or indirectly, by the taxpayer;
- 3) a corporation who owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer; and
- 4) a corporation 80% or more of whose voting stock is owned or controlled, directly or indirectly, by the entity that owns or controls, directly or indirectly, 80% or more of the voting stock of the taxpayer.

Commodities, as referred to in these instructions, are those defined in section 475(e)(2) of the IRC.

Cost is the basis of property as defined in section 1012 of the IRC.

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

Nonqualified nonrecourse financing is any amount for which a 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 from 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 49(a)(1) of the IRC.

Other basis means the adjusted basis for determining gain or loss used as the basis for depreciation under section 167(g) of the IRC.

Principally used means more than 50%. A building or an addition to a building is principally used in qualifying activities where more than 50% of its usable business floor space is used in qualifying activities. Floor space used for bathrooms, cafeterias, and lounges is not usable business floor space. Equipment is principally used in qualifying activities when it is used in such activities more than 50% of its operating time. Operating time may be determined based on actual time, cost allocations to individual business units, or any other reasonable method that accurately reflects operating time.

Purchase or sale includes, but is not limited to, the issuance, entering into, assumption, offset, assignment, termination, or transfer of stocks, bonds, commodities, or other securities.

A *security* is defined in section 475(c)(2) of the IRC.

Mergers and Acquisitions (Article 9-A only)

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 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 in which 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.

Bank as a Dealer: A banking corporation is acting as a dealer when the corporation: 1) regularly purchases securities (as defined in IRC section 475(c)(2)) or commodities (as defined in IRC section 475(e)) from or sells securities or commodities to customers in the ordinary course of its trade or business; or 2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities or commodities with customers in the ordinary course of its trade or business. The credit is not allowed for property located in the banking corporation's trading department unless the property is principally used by the taxpayer in the ordinary course of the taxpayer's business as a dealer. On audit, it will be necessary for the taxpayer to demonstrate that the qualified property is principally used in the ordinary course of the taxpayer's business as a dealer.

Line Instructions

Schedule A – Investment Tax Credit

Part 1 – Eligibility Requirement – To claim this credit, all or a substantial portion of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such property must be located in New York State. To meet this requirement, a taxpayer must maintain a requisite number of employees performing administrative and support functions in New York State during the taxable year in which the property is placed in service and the credit claimed. (If the property is used by an affiliate in qualifying activities, the

affiliate must maintain that requisite number of employees.) A taxpayer is presumed to have maintained the requisite number of employees where the average number of employees performing the administrative and support functions is at least 95% of the average number of employees performing these functions during the 36 months immediately preceding the year in which the credit is claimed.

The average number of employees must be computed on a quarterly basis. However, where quarterly employment information is not available for years prior to 1998, with respect to determining the average number of employees during the 36 months immediately preceding the year for which the credit is claimed, a taxpayer may make a reasonable determination of the average number of employees based upon information available to the taxpayer.

Employees performing administrative and support functions include all employees other than brokers, dealers, or investment advisors to regulated investment companies. Generally, any employee whose compensation for the taxable year is based more than 50% on commissions is presumed to be a broker, dealer, or investment advisor. However, if a taxpayer does not compensate those employees who are employed as brokers, dealers, or investment advisors on a commission basis, the taxpayer must specifically identify the employees performing those functions, and must exclude those employees from the employment percentage calculation.

Article 32 - Include only those employees employed in the department or departments of the banking corporation that perform the broker, dealer, or investment advisory functions to determine if the taxpayer has maintained a requisite number of employees performing administrative and support functions in New York State.

National securities exchange, board of trade, or wholly-owned entities thereof - Identify those employees who are performing the administrative and support functions resulting from or related to the activities of the securities exchange, board of trade, or other entity, and calculate the employment percentage using those employees.

Schedule A, Part 1 has been provided as an acceptable method of determining whether a corporation meets the eligibility requirements. As an alternative, a taxpayer may employ other reasonable methods of determining eligibility. This alternative method must be demonstrated to the Tax Department as an appropriate method.

In determining if a taxpayer has maintained a requisite number of employees performing administrative and support functions in New York State in the taxable year for which the credit is claimed, combined filers under Articles 9-A and 32 must apply the appropriate method on an individual entity basis for each company claiming a credit.

If your corporation **does not meet the eligibility requirements** as stated above, **do not complete Schedule A, Part 2**. You are **not eligible** for the investment tax credit. However, you must complete *Schedule B* if you are eligible for the employment incentive credit (Article 9-A only). You must complete *Schedule C* if you need to recapture a credit previously taken. You must also complete the *Summary of Tax Credits* and the *Computation of Investment Tax Credit Used, Refunded, Carried Forward* sections if you are claiming an investment tax credit, an employment incentive credit, or both.

Line 1 – In columns A through D enter the number of employees who perform administrative and support functions in New York State on the dates listed. Add columns A through D and enter the total in column E.

Lines 2 through 4 – Enter the number of employees who perform administrative and support functions in New York State, on each of the dates listed for the 36 months immediately preceding the year in which the investment tax credit is claimed. Add columns A through D (include 0 dates), and enter the total in column E for each line.

If your corporation provided employment in New York State for only part of the 36 month test period, the 36 month test period is deemed to refer to that part. If your corporation did not provide employment in New York State at any time during the three-year test period, skip lines 2 through 7 and enter "0" on line 8. (There must be a positive entry on line 1.)

Line 8 – Divide line 5 by line 7. The result **must equal or exceed 95%. If it does not, do not complete Schedule A, Part 2. You do not qualify** for the investment tax credit.

Example:

Part 1 - Eligibility Requirement (see instructions)

Number of administrative and support employees in New York State on date specified					
	A 3/31	B 6/30	C 9/30	D 12/31	E Total (A+B+C+D)
1 Current tax year	100	100	125	175	500
2 First test year	100	100	100	100	400
3 Second test year	50	75	75	100	300
4 Third test year	0	0	40	50	90

Line 5 500÷4 = 125
 Line 6 400 + 300 + 90 = 790
 Line 7 790/12 = 66
 Line 8 125÷66 = (189%)

Schedule A, Part 2 – Computation of Investment Tax Credit

Columns A and B – Describe the qualified property placed in service during this taxable period. Individual items must be listed separately and may not be shown as one general category. Describe the property in terms that a layman will understand. Attach additional pages if necessary.

Column D – Enter the useful life of each item claimed. Do not use the recovery period for depreciation under the Accelerated Cost Recovery System (ACRS) or the Modified Accelerated Cost Recovery System (MACRS).

Column F – New York C corporations use the appropriate rate from *Rate Schedule 1* on page 3 of Form CT-44. Electing New York S corporations use a 4% rate.

**Schedule B – Employee Incentive Credit
 Part 1 – Eligibility for Employment Incentive Credit**

This credit is for Article 9-A filers only. **Do not complete Schedule B if your corporation is not subject to tax under Article 9-A.**

When a corporation is allowed an investment tax credit, the corporation may be eligible for an employment incentive credit for the next two immediately succeeding tax years. However, the credit is not allowed for those years if the corporation's average number of employees in New York State is not at least 101% of the average number of employees in New York State during the employment base year.

A taxpayer that has claimed an investment tax credit for property it purchased which is principally used by an affiliate of the taxpayer, may also be eligible for an employment incentive credit. In this case, the credit is allowed based on the taxpayer's average number of employees in New York State. The number of the affiliate's employees are not taken into consideration.

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. Complete Schedule B, Part 1 to see if your corporation qualifies for the employment incentive credit.

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, 1999, and ending August 31, 2000, would use the following dates to compute the number of New York State employees for that fiscal year: September 30, 1999, December 31, 1999, March 31, 2000, and June 30, 2000.

Complete Part 1 for each period listed in Part 2 for which employment incentive credit is claimed. Exclude any employee for whom an EDZ wage tax credit was claimed based on employment within a Zone Equivalent Area. However, include such employees for the employment base year on lines 10 and 12.

Column A – Enter the credit year and the base year. The credit year is the first or second tax year after the year in which you claimed the investment tax credit.

Columns B, C, D, and E – Enter the total number of employees employed in New York State on each of the dates listed that occurred during your tax year.

Column G – Unless you have a short tax year, divide the amount in column F by four. If you have a short tax year (less than 12 months) divide the amount in column F by the number of dates shown in columns B through E that occur during the short year.

Column H – Divide the average number of employees covered by this claim by the average number of employees in the base year. Carry the result to two decimal places. If the percentage in column H is at least 101%, (1.01), complete Schedule B, Part 2. If the percentage in Column H is **less than 101%** for both tax periods **do not complete Schedule B, Part 2. You do not qualify** for the employment incentive credit.

Schedule B, Part 2 – Computation of Employment Incentive Credit

General

The amount of employment incentive credit is 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 was allowed. The percentage used to compute this credit will vary depending on the level of employment (see *Rate Schedule 2* on Form CT-44).

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.

The credit may be carried forward for up to 15 tax years or until completely used. A New York C corporation cannot claim a refund of the employment incentive credit.

New York S Corporations – For shareholders of a New York S corporation who claim an employment incentive credit, any excess employment incentive credit that cannot be used to reduce their current tax liability can be carried forward for up to **ten** tax years. However, a shareholder that qualifies as an owner of a new business may elect to have the excess employment incentive credit refunded.

Schedule C – Recapture of Investment Tax Credit

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.

There are different formulas for computing the amount of recaptured investment tax credit for property depreciated under IRC sections 167 and 168.

Column H

(1) For property depreciated solely under IRC section 167, the recapture formula 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 recapture formula is:

$$\frac{\text{months of unused life}}{36} \times \text{investment tax credit allowed}$$

(3) For property depreciated under IRC section 168, other than three-year property, or buildings or structural components of buildings, the formula is:

$$\frac{\text{months of unused life}}{60} \times \text{investment tax credit allowed}$$

(4) For buildings or structural components of building depreciated under IRC section 168, the formula is:

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

Property that is depreciated under IRC section 168 for federal tax, but that is required to be depreciated under IRC section 167 for New York State tax (decoupled property), is subject to formula (1) above.

If qualified property has a useful life of more than 12 years, and it has been in use for more than 12 years, no recapture is necessary.

If the taxpayer is a target corporation in a section 210 subdivision 17 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 section 210 subdivision 18 corporate merger, property of a target corporation which was the basis for the investment tax credit shall be deemed disposed of on the day immediately preceding the corporate consolidation or corporate merger.

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

Line 18 – Additional recapture – You must also compute an additional recapture amount equal to the original recapture amount multiplied by the interest rate (simple interest) in effect on

the last day of the tax year. For applicable rates call the Business Tax Information Center at 1 800 972-1233.

Example:

\$1000 recaptured investment tax credit x 9% interest rate for 1997 = \$90 additional recapture

Summary of Tax Credits

Line 25 – This is the net investment tax credit available for use this period. If the amount on line 24 is greater than line 23, you have a net recaptured tax credit. Add the recaptured credit back to the tax on your franchise tax report (CT-3, CT-3-A, CT-32, or CT-32-A).

Computation of Investment Tax Credit Used, Refunded, Carried Forward

Line 27 – If you are claiming more than one credit, enter the amount of the credits previously claimed. Otherwise, enter "0".

Order of credits – Under Article 9-A section 210.25 provides that the following credits must be applied in the following order, before the investment tax credit: the eligible business facility credit, tax credit for servicing mortgages, economic development zone wage tax credit, zone equivalent area wage tax credit, and carryovers of the economic development zone wage tax credit or zone equivalent area wage tax credit. Other credits may be applied before the investment tax credit at your election.

Under Article 32, all the credits must be deducted before the investment tax credit. The credits are claimed in the following order: eligible business facility credit, economic development zone capital corporation tax credit, tax credit for servicing mortgages, economic development zone wage tax credit, claim for credit for employment of persons with disabilities, special additional mortgage recording tax credit, and investment tax credit.

Line 32 – A corporation that is eligible to claim an investment tax credit and is also a new business as defined in section 210.12(j) or 1456(i), may elect to receive a refund of its unused investment tax credit instead of carrying the credit forward. No interest will be paid on this refund. A new business is defined as any business except:

- a corporation in which more than 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 tax under sections 183, 184, 185, or 186 of Article 9, Article 9-A, Article 32, or Article 33 of the Tax Law;
- a corporation substantially similar in operation and in ownership to a business entity or entities taxable or previously taxable under sections 183, 184, 185, or 186 of Article 9, Article 9-A, Article 32, or Article 33 of the Tax Law; 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 or 32 for more than four taxable years (excluding short periods) prior to the tax year during which the taxpayer first becomes eligible for the investment tax credit.

Transfer the refund amount to Form CT-3, line 99; Form CT-3-A, line 100; Form CT-32, line 20; or Form CT-32-A, line 22.

To avoid the unnecessary exchange of funds, we will apply this refund against the minimum tax due. We will refund the balance, if any.