



# Instructions for Form DTF-622

## Claim for QETC Capital Tax Credit

Tax Law – Article 9-A, Section 210.12-F and Article 22, Section 606(r)

# DTF-622-I

### New for 2000

On August 9, 1999, Governor Pataki signed new legislation into law to provide new tax credits to enhance emerging technology industries in New York State for Article 22 taxpayers (individuals, sole proprietors, partners in partnerships, shareholders of New York S corporations, members of a limited liability company (LLC), estates and trusts, and beneficiaries of estates and trusts). For tax years beginning on or after January 1, 2000, the Qualified Emerging Technology Company (QETC) Capital Tax Credit is available to Article 22 taxpayers. Previously, this credit was allowed only to Article 9-A (Franchise Tax on Business Corporations) taxpayers.

### General information

The Qualified Emerging Technology Company (QETC) Capital Tax Credit under section 210.12-F of Article 9-A and section 606(r) of Article 22 of the Tax Law was created to stimulate investing in a qualified emerging technology company. The credit is available to Article 9-A taxpayers or Article 22 taxpayers (that is individuals, including sole proprietors, partners in partnerships, shareholders of New York S corporations, estates and trusts, and beneficiaries of estates and trusts). For Article 9-A taxpayers, the credit is effective for tax years beginning on or after January 1, 1999. For Article 22 taxpayers, the credit is effective for tax years beginning on or after January 1, 2000. For additional information about the credit see TSB-M-99(2)C or TSB-M-00(2)I.

### Eligibility

You may claim this credit if you are:

- a corporation that is subject to tax under Article 9-A;
- a sole proprietor (including estates and trusts that are sole proprietors);
- a partner in a partnership (including a member of a limited liability company (LLC) that is treated as a partnership for federal income tax purposes);
- a shareholder of a New York S corporation; or
- a beneficiary of an estate or trust where the estate or trust is a sole proprietor, partner in a partnership, or a shareholder of a New York S corporation;

and the corporation, sole proprietorship, partnership, or S corporation made a qualified investment in a certified qualified emerging technology company.

### Credit amount

The QETC capital tax credit is computed on each qualified investment made during the tax year in a certified qualified emerging technology company and is equal to the sum of:

- ten percent of qualified investments in certified qualified emerging technology companies, if the taxpayer certifies to the Commissioner of Taxation and Finance at the time the credit is claimed that the qualified investment will not be sold, transferred, traded, or disposed of within four years from the close of the tax year in which the QETC capital tax credit is first claimed; and
- twenty percent of qualified investments in certified qualified emerging technology companies, if the taxpayer certifies to the Commissioner of Taxation and Finance at the time the credit is claimed that the qualified investment will not be sold, transferred, traded, or disposed of within nine years from the close of the tax year in which the QETC capital tax credit is first claimed.

### Attachment required

The Commissioner of Taxation and Finance issues documentation of certification to a QETC that has been certified. A copy of this documentation must be submitted by the taxpayer when claiming this credit.

### Definitions

*Qualified investment* means:

- the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest; and
- the contribution of property to a partnership in exchange for an interest in the partnership; and
- similar contributions to a business entity not in corporate or partnership form in exchange for an ownership interest in the entity.

Qualified investments **do not include** investments made by or on behalf of an owner of the qualified emerging technology company, including, but not limited to, a stockholder, partner, sole proprietor, or any related person (as defined in section 465(b)(3)(C) of the Internal Revenue Code (IRC)).

An *owner of the qualified emerging technology company* means an entity that owns more than a 10% interest in a qualified emerging technology company. The percentage of ownership in a certified emerging technology company is determined based upon the amount of the following:

- the number of shares of stock issued and outstanding; or
- the contribution of property to a partnership; or
- similar contributions in the case of a business entity not in corporate or partnership form.

A *qualified emerging technology company* is, pursuant to section 3102-e of the Public Authorities Law (PAL), a company located in New York State that has total annual product sales of \$10 million or less, and meets either of the following criteria:

- Its primary products or services are classified as emerging technologies under section 3102-e(1)(b) of the PAL; or
- It has research and development activities in New York State and its ratio of research and development funds to net sales equals or exceeds the average ratio for all surveyed companies classified (as determined by the National Science Foundation (NSF) in the most recently published results from its survey *Research and Development in Industry*, or a comparable successor survey as determined by the Tax Department). For more information see TSB-M-99(2)C or TSB-M-00(2)-I.

A *certified QETC* means a qualified emerging technology company which has filed Form DTF-620, *Application for Certification of a Qualified Emerging Technology Company*, and has been certified as a QETC by the Commissioner of Taxation and Finance.

### Credit limitations

Sections 210.12-F and 606(r) impose the following three limitations on the QETC capital tax credit:

- The credit and any carryover of the credit may not reduce the tax imposed by Article 9-A to less than the higher of the tax on minimum taxable income base or the fixed dollar minimum (computed before the addition of the MTA surcharge and without regard to any credits); and the credit may not exceed the tax due under Article 22.

- The total amount of credit allowable to a taxpayer for all years may not exceed \$150,000 for a credit computed at the rate of 10% of qualified investments, and \$300,000 for a credit computed at the rate of 20% of qualified investments.
- The credit and any carryover of the credit may not exceed 50% of the tax imposed by section 209 of Article 9-A and section 601 of Article 22 without regard to any credit.

This credit is not refundable. However, any amount of credit or carryover of credit not deductible in the current tax year may be carried over and deducted from the tax in succeeding tax years.

### Recapture of credit

If a taxpayer sells, transfers, or otherwise disposes of corporate stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, or if an investment is recovered by the taxpayer that was the basis for the allowance of the QETC capital tax credit, and the disposal or recovery occurs during the tax year or within 48 months (for a credit at the rate of 10% of qualified investments), or 108 months (for a credit at the rate of 20% of qualified investments) from the close of the tax year when the credit was allowed, the taxpayer must add back to the tax in the tax year of the disposition or recovery, the required portion of the credit originally allowed. For more information, see Schedule D.

**Combined filers** - A taxpayer filing as a member of a combined group is allowed to claim the credit. The credit is computed on a separate basis in Schedule A, Part I and Part II, and applied against the combined tax.

### Line instructions

Partner in a partnership, shareholder of a New York S corporation, and beneficiary of an estate or trust: complete Line A, and Schedules B and C.

Corporations, fiduciaries, and self-employed individuals: complete all applicable schedules.

New York S corporations and partnerships complete Schedule A and, if applicable, Schedule D. Fiduciaries, self-employed individuals, S corporations, and partnerships: combine the amounts on lines 3 and 6 and transfer the total to Form IT-201-ATT, line 50; Form IT-203-B, line 38; Form IT-204, line 32; or Form IT-205, line 10.

### Line A

**Partner** - Enter your share of the partnership's credit on Line A. Your share of the credit can be obtained from the partnership. Provide the name and identification number of the partnership.

**Shareholder** - Enter your share of the New York S corporation's credit on line A. Your share of the credit can be obtained from the New York S corporation. Provide the name and identification number of the New York S corporation.

**Beneficiary** - Enter your share of the estate or trust credit on Line A. Your share of the credit can be obtained from the fiduciary. Provide the name and identification number of the estate or trust.

If you are claiming a credit from more than one partnership, New York S corporation, or trust, combine all amounts on Line A and attach a list showing a breakdown of the amounts and the name and identification number of each entity.

## Schedule A - Computation of credit

### Part I - Computation of credit for qualified investments to be held four years

**Column A** - Enter the name of the certified QETC in which the qualified investment to be held for four years was made.

### Part II - Computation of credit for qualified investments to be held nine years

**Column A** - Enter the name of the certified QETC in which the qualified investment to be held for nine years was made.

### Schedule B - Limitations of QETC capital tax credit

#### Part I

**Line 7** - Article 9-A taxpayers: enter the tax from CT-3, line 78 or CT-3-A, line 77. Article 22 taxpayers: if you file Form IT-201, enter the total of your tax from line 36 **and** Form IT-230-I, Worksheet A, line 1, reduced by any household credit, resident credit, and accumulation distribution credit. If you file Form IT-203, enter the total of your tax from line 44 **and** Form IT-203-B, line 1, reduced by any resident credit and accumulation distribution credit. Resident filers of Form IT-205, enter the tax from line 8, reduced by any resident credit or accumulation distribution credit. Nonresident or part-year resident filers of Form IT-205, enter the tax from line 9, reduced by any resident credit or accumulation distribution credit.

#### Part II - \$150,000/\$300,000 limitation

**Line 10** - The total amount of credit allowable to a taxpayer for all years may not exceed \$150,000 for a credit computed at the rate of 10% of qualified investments, and \$300,000 for a credit computed at the rate of 20% of qualified investments. However, if a husband or wife is required to file a separate return, the \$150,000 limitation is reduced to \$75,000 and the \$300,000 limitation is reduced to \$150,000, unless the taxpayer's spouse has no credit allowable for the tax year which ends with or within the taxpayer's tax year.

In the case of an estate or trust, the \$150,000 limitation and \$300,000 limitation of the credit is reduced to an amount which bears the same ratio to \$150,000 and an amount which bears the same ratio to \$300,000 as the portion of the income of the estate or trust that is not allocated to beneficiaries bears to the total income of the estate or trust.

**Note:** If the investments are made by a partnership or New York S corporation, the partners or shareholders would compute their credit based upon their distributive or pro-rata shares of the investments made by the partnership or corporation. If the investments are made by an estate or trust, the estate or trust and its beneficiaries would compute their credits based upon their shares of the estate's or trust's investment, allocated between them on the same basis as the income of the estate or trust is allocated. In all cases, the credit limitations would be applied separately on each personal income tax return.

**Line 11** - Enter the QETC capital tax credit that was allowed in previous tax years, less any recaptured credit.

**Line 12** - Subtract line 11 from line 9, or, if it applies, from line 10. The result represents the amount of credit that may still be claimed in each category.

**Line 13** - If you are a partner in a partnership, a shareholder in a New York S corporation, or a beneficiary of an estate or trust, enter the smallest of line A, line 8, or line 12.

All others: for column A, enter the smaller of line 12 or line 3. For column B, enter the smaller of line 12 or line 6. Add columns A and B for line 13 and enter the total in column C.

### Part III - Tax on minimum taxable income base/fixed dollar minimum (Article 9-A only)

**Line 15** - Enter the total amount of any other credits used against the current year's tax. Certain credits must be applied before the QETC capital tax credit. Refer to the instructions of your franchise tax return to determine the order of credits that apply.

## Schedule C - Computation of QETC capital tax credit and carryover

**Line 20** - Enter the amount of unused QETC capital tax credit carried forward (line 28 of your 1999 Form DTF-622), if any.

**Line 22** - S corporation shareholders, partners in a partnership, and beneficiaries of an estate or trust, enter your share of the S corporation's, partnership's, or estate's or trust's recaptured credit. Your share of the credit can be obtained from the S corporation, the partnership, or the estate or trust. Provide the name and identification number of the entity.

**Line 23** - If line 22 is greater than line 21, subtract line 21 from line 22. This is your net QETC capital tax credit recapture. Personal income tax filers enter the amount here and on Form IT-201-ATT, line 23; or Form IT-203-B, line 9. Corporate taxpayers enter the amount here and on Form CT-3, line 78; or Form CT-3-A, line 77.

**Line 25** - Subtract line 24 from line 23 to arrive at your QETC capital tax credit to be carried forward to future years. You will need to refer to this figure when completing your 2001 Form DTF-622.

## Schedule D - Recapture of credit

### Part I - Recapture of credit for qualified investments to be held four years

If a taxpayer sells, transfers, or otherwise disposes of corporate stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, or if an investment is recovered by the taxpayer that was the basis for the allowance of the QETC capital tax credit, and the disposal or recovery occurs during the tax year or within 48 months from the close of the tax year when the credit was allowed, the taxpayer must add back to the tax in the tax year of the disposition or recovery, the required portion of the credit originally allowed.

**Column C** - For recapture purposes, the amount of the credit to be added back must be the portion of the credit attributable to the qualified investment disposed of, or the investment recovered, multiplied by the following percentage:

- 100%, if the disposition or recovery occurs within the tax year in which the credit is allowed, or within 12 months of the end of that tax year;
- 75%, if the disposition or recovery occurs more than 12 months, but not more than 24 months, after the end of the tax year in which the credit was allowed;
- 50%, if the disposition or recovery occurs more than 24 months, but not more than 36 months, after the end of the tax year in which the credit was allowed; or

- 25%, if the disposition or recovery occurs more than 36 months, but not more than 48 months, after the end of the tax year in which the credit was allowed.

### Part II - Recapture of credit for qualified investments to be held nine years

If a taxpayer sells, transfers, or otherwise disposes of corporate stock, a partnership interest, or other ownership interest arising from the making of a qualified investment, or if an investment is recovered by the taxpayer that was the basis for the allowance of the QETC capital tax credit, and the disposal or recovery occurs during the tax year or within 108 months from the close of the tax year when the credit was allowed, the taxpayer must add back to the tax in the tax year of the disposition or recovery, the required portion of the credit originally allowed.

**Column C** - For recapture purposes, the amount of the credit to be added back must be the portion of the credit attributable to the qualified investment disposed of, or the investment recovered, multiplied by the following percentage:

- 100%, if the disposition or recovery occurs within the tax year in which the credit is allowed, or within 12 months of the end of that tax year;
- 80%, if the disposition or recovery occurs more than 12 months, but not more than 48 months, after the end of the tax year in which the credit was allowed;
- 60%, if the disposition or recovery occurs more than 48 months, but not more than 72 months, after the end of the tax year in which the credit was allowed;
- 40%, if the disposition or recovery occurs more than 72 months, but not more than 96 months, after the end of the tax year in which the credit was allowed; or
- 20%, if the disposition or recovery occurs more than 96 months, but not more than 108 months, after the end of the tax year in which the credit was allowed.

**Line 28** - Add line 26, column D and line 27, column D and enter the amount on line 28. This is your total recaptured credit. Corporations, fiduciaries, and individuals: enter the line 28 amount on line 22. S corporations and partnerships: provide shareholders or partners with their share of the recaptured credit. S corporations enter the amount from line 28, on Form CT-34-SH, line 27. Partnerships enter the amount from line 28, on Form IT-204, line 33. Estates and trusts enter the amount from line 28, on Form IT-205, line 12.